

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**JOCELYN PETTENATO, JILL LAW,
ANITRA STEWART, AND ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs,

v.

**BEACON HEALTH OPTIONS, INC.,
BEACON HEALTH STRATEGIES LLC,
AND VALUEOPTIONS FEDERAL
SERVICES, INC.**

Defendants.

Civil Action No. 1:19-cv-01646-JPO-BCM

**PLAINTIFFS' MOTION AND ORDER ON THE DISMISSAL
OF PLAINTIFF MAIA SMITH**

Plaintiffs, by and through their counsel, pursuant to Federal Rule of Civil Procedure 41(a)(2) request that the Court enter an Order dismissing Plaintiff Maia Smith's claims without prejudice. In further support of this Motion, Plaintiffs state as follows:

1. Plaintiffs filed the Complaint on February 21, 2019. Dkt. 1.
2. Plaintiffs filed a First Amended Complaint on June 28, 2019. Dkt. 44.
3. Plaintiff Maia Smith filed a consent form to opt into the lawsuit on December 9, 2019. Dkt. 86.
4. Plaintiff Maia Smith informed her counsel on December 18, 2019, that she wished to dismiss her claims against all Defendants, and Plaintiffs' Counsel asked Defendants whether they would agree to the dismissal of her claims.
5. On December 19, 2019, counsel for Defendants stated they would not agree to Plaintiff Maia Smith's dismissal without prejudice and would only agree to a dismissal with prejudice.

6. Dismissal with prejudice is a “draconian remedy.” *Scott v. Chipotle Mexican Grill, Inc.*, No. 12CV08333ALCSN, 2015 WL 13745760, at *1 (S.D.N.Y. July 31, 2015), report and recommendation adopted as modified, No. 12-CV-8333 (ALC), 2016 WL 397677 (S.D.N.Y. Feb. 1, 2016)).

7. In *Scott*, Magistrate Judge Netburn distinguished between unresponsive FLSA opt-in plaintiffs and withdrawing FLSA opt-in plaintiffs. While unresponsive FLSA opt-in plaintiffs were subject to dismissal of their claims with prejudice, withdrawing plaintiffs need not forfeit their right to refile a case. *Scott*, 2015 WL 13745760 at *9. Unlike plaintiffs who do not respond to discovery, withdrawing plaintiffs “actively sought to remove themselves from the case” and “they did so early in the discovery process.” *Id.* The district court adopted this recommendation and granted the withdrawing plaintiffs’ motion to dismiss without prejudice. *Scott v. Chipotle Mexican Grill Inc.*, No. 12-CV-8333 (ALC), 2016 WL 397677, at *4 (S.D.N.Y. Feb. 1, 2016).

8. Opt-In Plaintiff Smith has actively sought to remove herself from this case and has done so quickly. Her claims should be dismissed without prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (a) Plaintiff Maia Smith’s claims are dismissed without prejudice;
- (b) All other Plaintiffs’ claims are unaffected by this Order.

Date: January 15, 2020

Respectfully submitted,

By: /s/ Maureen A. Salas

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The Clerk of Court is directed to close the motion at
Docket Number 111.

Dated: January 29, 2020
New York, New York

SO ORDERED



J. PAUL OETKEN
United States District Judge